

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6146

PETITION OF CAROL LINDEMAN
(Hearing held July 19, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, October 12, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction a new single-family dwelling that requires a 5.38 foot variance as it is within 25.60 feet of the established front building line. The required established building line is 30.98 feet.

The petitioner appeared with her husband, Ephraim King; Michele Oaks, Montgomery County Historic Preservation Commission; and Paul Treseder, an architect.

The subject property is Lot A, Block 76, B. F. Gilbert's Subdivision at Takoma Park, located at 7306 Baltimore Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 0101634423).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a new single-family dwelling.
2. Mr. King testified that their home is located in the historic district in Takoma Park and that the Historic Preservation Commission (HPC) recommended approval of the construction of his new home in its Staff Report dated March 15, 2006. Mr. King testified that the Staff Report recommended maintaining a consistency with the setback that will be in-line with the other homes located on either side of the petitioner's street. Mr. King testified that four or five homes on his street are sited at 25 or 26 feet from the street, and that one house is sited closer to the street than 25 feet. See Exhibit Nos. 4(b) [site plan and established building line data] and 7 [Historic Preservation Commission Staff Report].

3. Mr. King testified that his lot is unusually small and shallow in comparison to the lots on his street and the three neighboring streets. Mr. King testified that 87% of the lots in the area are larger in size than his lot and that 84% of those lots are longer in depth than his lot. Mr. King testified that the siting of the new house will be consistent with the other four homes to the north of his lot and that the siting of the house will be in harmony with the existing streetscape. See Exhibit Nos. 3 [petitioner's statement] and 8 [zoning vicinity map].
4. Mr. King testified that the houses at 7308, 7310, 7312 and 7314 Baltimore Avenue are all sited at 25 to 26 feet from the street and that these houses are contributing resources in the historic district. Mr. King testified that the houses at 7316 and 7318 Baltimore Avenue are sited 33 and 50 feet, respectively, from the street and that these houses are not contributing resources to the historic district. Mr. King testified that lots 7308 through 7318 Baltimore Avenue were used in the calculation of the established building line.
5. Ms. Oaks testified that the petitioner's property is a contributing and outstanding resource in the Takoma Park historic district and that the property is flanked by other outstanding resources in the district. Ms. Oaks testified that the lots that are contributing historic resources to the district are consistent in streetscape and are sited 25 to 26 feet from the street. Ms. Oaks testified that the subject property has an existing garage that will remain as condition of approval because the property has a garage that was built at the turn-of-the-century that it is an example of the district's earliest garages.
6. Ms. Oaks testified that the HPC's goal for new construction in the historic district is to be sympathetic to the traditional building patterns and design of the neighborhood. Ms. Oaks testified that the HPC recommended approval of the petitioner's variance request. See Exhibit Nos. 11(a) and 11(b) [aerial photographs].

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual

practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that while the petitioner's lot is smaller than the neighboring lots, the property's lot size is consistent with the minimum lot size of the zone. The Board finds that the uniqueness of the subject property is its location in Takoma Park's historic district and that it is surrounded by outstanding historic resources. The Board finds that subject property is an undeveloped lot in the historic district and that its development is subject to very specific guidelines stated in the Takoma Park historic master plan guidelines in order to maintain consistency with other outstanding resources in the historic district.

The Board finds that these are exceptional circumstances that are peculiar to the subject property and that the strict applications of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance request for the construction of a new single-family dwelling is the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction is accordance with the residential development guidelines of the Takoma Park historic district master plan and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the new single-family dwelling will be consistent with existing Baltimore Avenue streetscape and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 5.38 feet from the required 30.98 established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 5(a) through 5(h).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Angelo M. Caputo was necessarily absent and did not participate in this Resolution. On a motion by Caryn L. Hines, seconded by Wendell M. Holloway, with Donna L. Barron and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 12th day of October, 2006.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.